



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 20, 2022

IN THE MATTER OF:

Appeal Board No. 622644

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 622641, 622642 and 622643, the claimant appeals from the decisions of the Administrative Law Judge filed March 22, 2022, which sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective April 13, 2020 through August 23, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$6,804 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$7,200 in Federal Pandemic Unemployment

Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 104 effective days and charging a civil penalty of \$2,100.60 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622644, 622645 and 622646, the claimant appeals from the decisions of the Administrative Law Judge filed March 22, 2022, which sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective April 27, 2020 through May 17, 2020, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of \$252 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future benefits by

eight effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 622647, 622648 and 622649, the claimant appeals from the decisions of the Administrative Law Judge filed March 22, 2022, which sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective May 4, 2020 through May 24, 2020, on the basis that the claimant was on a paid vacation period; charging the claimant with an overpayment of \$504 in regular unemployment insurance benefits recoverable pursuant to Labor Law §

597 (4), and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$165.60 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant has submitted new evidence regarding the issue of the Commissioner of Labor's timeliness objection, including secure messages sent to the Department of Labor on July 14, 2021, July 31, 2020, and August 5, 2021. The Board has determined to provide the claimant another opportunity to submit such additional testimony and other evidence, including these three secure messages. The parties shall be confronted with the contents of these messages and afforded an opportunity to offer objections to entry of the documents into the record, after which they shall be made part of the record. The parties shall be afforded an opportunity to submit further relevant testimony and evidence regarding the timeliness of the claimant's hearing request and, if appropriate, the Judge may take testimony and evidence regarding the merits of these cases.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues upon due notice to all parties

and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to

be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER